REMARKS

Applicants would like to thank Examiners Le and Gabel for personal interview held with Applicants' representatives on December 5, 2006.

Claims 20-22, 27, 29-39, 46 and 47 are currently pending and presented for examination. Claim 27 is amended to improve clarity. Support for the amendments to claim 27 can be found in the specification, for example, at page 50, line 12 to page 51, line 3; page 48, lines 10-17 and elsewhere throughout the specification.

Rejection of claims 20-22, 27, 29-39, 46 and 47 under 35 U.S.C. § 112, second paragraph

The Examiner rejects independent claim 27, and the claims dependent thereon, under 35 U.S.C. § 112, second paragraph as allegedly vague and indefinite. In particular, the Examiner asserts that it is unclear how the at least first target analyte interrelates to the first bioactive agent. Additionally, the Examiner asserts that use of the phrase "first target analyte" in the claim is ambiguous because the phrase "second target analyte" does not appear elsewhere in the claim set.

Applicants have clarified claim 27 by replacing the phrase "first target analyte" with "target analyte." Furthermore, as discussed during the interview of December 5, 2006, the Examiner has agreed to withdraw the remaining rejection of independent claim 27 under 35 U.S.C. § 112, second paragraph. Accordingly, Applicants respectfully request that the Examiner withdraw the rejections under 35 U.S.C. § 112, second paragraph.

Rejection of claims 20-22, 27, 29-39, 46 and 47 under the doctrine of obviousness-type double patenting

The Examiner rejects claims 20-22, 27, 29-39, 46 and 47 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 39-48 of U.S. Patent Application No. 08/944,850, issued as U.S. Patent No. 7,115,884 (the '884 patent) in view of U.S. Patent No. 5,739,000 (the '000 patent). In particular, the Examiner asserts the claims of the instant application are not patentably distinct from the claims of the '884 patent. Although the Examiner states that the '884 patent does not teach the specific statistical analyses recited in claims 31-39 of the instant application, the Examiner does assert that such analyses would be obvious to a skilled artisan in view of the disclosure of the '000 patent.

Applicants do not agree that claims 20-22, 27, 29-39, 46 and 47 are obvious in view of claims 39-48 of the '884 patent either alone or in combination with the disclosure of the '000 patent. However, as agreed during the interview of December 5, 2006, in order to expeditiously move the instant application to allowance, Applicants are filing a terminal disclaimer herewith.

In view of the above-mentioned terminal disclaimer, Applicants respectfully request that the Examiner withdraw the rejection of claims 20-22, 27, 29-39, 46 and 47 under the judicially created doctrine of obviousness-type double patenting.

Rejection of claims 20-22, 27, 29-39, 46 and 47 under 35 U.S.C. § 103(a)

The Examiner rejects claims 20-22, 27, 29-39, 46 and 47 under 35 U.S.C. § 103(a) as allegedly being obvious over the '884 patent in view of the '000 patent. In particular, the Examiner asserts that the '884 constitutes prior art that would be available under 35 U.S.C. § 102(e), and as such, is available for use in rejecting the claims under 35 U.S.C. § 103(a).

Applicants respectfully disagree with the characterization of the '884 patent as prior art that would be available under 35 U.S.C. § 102(e). To be classified as prior art under 35 U.S.C. § 102(e), the relevant subject matter contained in the asserted reference, among other things, must be invented "by another." In other words, a reference naming the exact same inventors as the subject application would not be considered prior art under 35 U.S.C. § 102(e). Applicants note that the '884 patent names David R. Walt and Todd A. Dickinson as inventors. The instant application also names David R. Walt and Todd A. Dickinson as inventors. As such, the inventorship of the '884 patent and the instant application is identical. Accordingly, the '884 patent is not considered prior art that would be available under 35 U.S.C. § 102(e), and thus, is not available for use in a rejection of the currently pending claims under 35 U.S.C. § 103(a).

In view of the foregoing remarks, Applicants respectfully request that the Examiner withdraw the rejection of claims 20-22, 27, 29-39, 46 and 47 under 35 U.S.C. § 103(a) as being obvious over the '884 patent in view of the '000 patent.

In addition to the foregoing rejection, the Examiner rejects claims 27, 29-39 and 46 as allegedly obvious over U.S. Patent No. 5,837,196 (the '196 patent) in view of U.S. Patent No. 5,739,000 (the '000 patent). In particular, the Examiner asserts that the '196 patent discloses a method of "simultaneous individual measurements of target analytes in an optical fiber array

having a plurality of subpopulations of identical sensor elements." The Examiner acknowledges that the '196 patent does not teach performing statistical analyses of measurements, however, to provide this missing element, the Examiner asserts that a skilled artisan would be motivated to apply the data analyses methods allegedly disclosed in the '000 patent to the methods allegedly disclosed in the '196 patent in order to arrive at the subject matter recited in claims 27, 29-39 and 46 of the instant application.

Applicants maintain that each of claims 20-22, 27, 29-39, 46 and 47 are fully patentable over the art of record. As agreed during the interview of December 5, 2006, the '196 patent does not teach or suggest methods of obtaining individual signals from sensor elements in response to an analyte, wherein the sensor elements comprise identical bioactive agents. The section of the '196 patent that is alleged to disclose such methods only describes obtaining signals "from groups of optical fibers where all of the optical fibers in a group bear the same species of biological binding partner." See column 9, lines 46-48. However, the '196 patent does not teach or suggest obtaining individual signals from separate fibers within this group such that a statistical analysis can be performed on signals from the fibers and such that statistical validity of the response signals is determined, as claimed. None of the other cited references remedy this deficiency.

In view of the foregoing remarks, Applicants respectfully request that the Examiner withdraw the rejection of claims 20-22, 27, 29-39, 46 and 47 under 35 U.S.C. § 103(a).

CONCLUSION

Applicants believe that all outstanding issues in this case have been resolved and that the present claims are in condition for allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to contact the undersigned at the telephone number provided below in order to expedite the resolution of such issues.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: December 21, 2006

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